

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

3 TROOPER 1,) 1:22-CV-00893-LDH-TAM
4 Plaintiff,) Brooklyn, NY
5 vs.) February 13, 2024
6 NEW YORK STATE POLICE,)
7 ET AL.,)
Defendants.)

11 APPEARANCES (All present by video or telephone):

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T N D E X

| | RULINGS: | PAGE | LINE |
|----|---|------|------|
| 3 | All text messages pertaining to Governor Cuomo must be turned over. | 35 | 24 |
| 4 | Document Request 1 to Mr. Brown is relevant and proportional. Date is limited from November 2017 to the present. | 40 | 17 |
| 5 | | | |
| 6 | | | |
| 7 | The request for communications between Mr. Brown and Trooper 1 regarding Trooper 1's twenty-six current and former NYSP colleagues is found not relevant and proportional to the needs of the case. | 41 | 6 |
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Colloquy

1 THE CLERK: This is our telephone status conference
2 for case Number 22cv00893, Trooper 1 v. New York State Police,
3 et al.

4 Before I ask the parties to state their appearances, I
5 would like to note the following. Persons granted remote
6 access to proceedings are reminded of the general prohibition
7 against photographing, recording, rebroadcasting of any court
8 proceedings. Violations of these prohibitions may result in
9 sanctions, including removal of court-issued media credentials,
10 restricted entry to future hearings, denial of entry of future
11 hearings, or any other sanctions deemed necessary by the Court.

12 In addition, due to the number of callers, I will ask
13 that all counsel, when addressing the Court, to have a clear
14 transcript of this proceeding, to please state your name when
15 addressing the Court so we can know who is speaking.

16 That being said, counsel for plaintiff, please state
17 your appearance for the record.

18 MR. JOHN CRAIN: Good morning, Your Honor. This is
19 John Crain from Wigdor LLP for plaintiff Trooper 1, and I'm
20 joined by Valdi Licul.

21 THE CLERK: Counsel for New York State Police, please
22 state your appearances for the record.

23 You're on mute.

24 MR. DANIEL MOORE: I'm sorry. This is Dan Moore, of
25 the firm of Harris Beach, PLLC, on behalf of the New York State

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1 Police.

2 MR. JOSHUA STEELE: This is Joshua Steele, from Harris
3 Beach PLLC, on behalf of the New York State Police.

4 THE CLERK: Counsel for defendant, Andrew Cuomo,
5 please state your appearances for the record.

6 MS. NEESHA CHHINA: Good morning, Your Honor. Neesha
7 Chhina, from Sher Tremonte LLP, on behalf of Governor Cuomo.
8 And I'm joined by my cocounsel, Rita Glavin.

9 MS. RITA GLAVIN: Good afternoon, Your Honor. Rita
10 Glavin of Glavin, PLLC.

11 MR. LEO KORMAN: Good afternoon. Leo Korman from
12 Glavin, PLLC.

13 THE CLERK: Counsels for defendant, DeRosa and
14 Azzopardi, please state your appearances for the record.

15 MS. CATHERINE FOTI: Katherine Foti, from Morvillo
16 Abramowitz Grand Iason & Anello, for Melissa DeRosa and Richard
17 Azzopardi.

18 MR. KAYASHA LYONS: Good afternoon. Kayasha Lyons,
19 from Morvillo Abramowitz Grand Iason & Anello, also on behalf
20 of Melissa DeRosa and Richard Azzopardi.

21 THE CLERK: And for nonparty defendant, Charles Brown,
22 counsels, please state your appearances for the record.

23 MR. KEVIN MINTZER: Good morning, Your Honor. Kevin
24 Mintzer, of Law Office Of Kevin Mintzer, P.C., for nonparty,
25 Charles Brown.

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1 THE COURT: All right. And are you -- do you have
2 somebody with you, Mr. Mintzer?

3 MR. DANIEL MOORE: Yes, I think my colleague was just
4 about to enter her appearance.

5 THE COURT: Okay. Thank you, sir.

6 MS. LAURA KOISTINEN: Good morning, Your Honor. Laura
7 Koistinen on behalf of Charles Brown.

8 THE COURT: Would you please spell your last name for
9 me?

10 MS. KOISTINEN: Sure. K-O-I-S-T-I-N-E-N.

11 THE COURT: Okay. All right. And I understand that
12 there may be additional callers on the line, members of the
13 public, perhaps counsel for interested parties. But we are
14 here today for a limited purpose, and that is to address this
15 discovery dispute related to matters concerning Charles Brown.
16 So unless you're here on this specific, narrow discovery
17 dispute, I'd ask all other callers to stay on mute.

18 And I'd like to start by trying to get a sense of
19 where we are on this discovery dispute. It seems as though
20 there have been some changes in the landscape since the letters
21 were first filed by Governor Cuomo's counsel back on February
22 1st, in light of some developments and updates that have been
23 provided by Mr. Licul as of yesterday. And I'm just trying to
24 understand, kind of, the lay of the land.

25 So Ms. Glavin, who is taking the lead on this issue on

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1 behalf of Governor Cuomo?

2 MS. GLAVIN: Your Honor. Ms. Chhina from Sher
3 Tremonte.

4 THE COURT: Thank you. So Ms. Chhina, would you like
5 to provide me an update as to where you believe we are? And
6 I'll then hear from Mr. Licul and Mr. Crain.

7 MS. CHHINA: Yes, Your Honor. Thank you. So you're
8 correct in identifying the dispute as being fairly narrow. And
9 so, with respect to the subpoena to Mr. Brown, our dispute is
10 with respect to two categories of documents, the first being
11 communications between Mr. Brown and Trooper 1 concerning
12 Governor Cuomo, and the second being communications between Mr.
13 Brown and Trooper 1 regarding twenty-six specific troopers that
14 we identified in our modified request.

15 And you're also correct in identifying the fact that,
16 after we filed our joint letter, Trooper 1 came forward and
17 said for the first time that she had a narrow set of documents
18 that were responsive to the Brown subpoena. We have not yet
19 received these documents for Trooper 1. They haven't been
20 produced to us.

21 It's our understanding that these documents were
22 responsive to RFPs that we served to Trooper 1 in June of 2022.
23 They're also responsive to RFPs that we served to Trooper 1 in
24 September of 2023. I'm not sure -- it's still unclear to me
25 why we were not made aware of these documents until we filed

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1 our joint letter.

2 We met and conferred with Trooper 1 on this issue
3 after the first filing that they made on February 2nd. We're
4 still in the meet-and-confer process with them with respect to
5 what they're withholding in these communications, but we have
6 no basis for thinking that Trooper 1 has every communication
7 that's covered by the Brown subpoena.

8 And so we don't see a reason why Trooper 1's objection
9 should prevent the Court from granting our motion to compel Mr.
10 Brown with respect to the documents that we're seeking in the
11 subpoena.

12 THE COURT: Mr. Licul, who is taking the lead on
13 behalf of Trooper 1?

14 MR. LICUL: It will be --

15 MR. CRAIN: It will be me.

16 MR. LICUL: -- Mr. Crain.

17 THE COURT: Okay. Mr. Crain -- and this is what Ms.
18 Dikester (ph.) was getting at a moment ago. We need to -- in
19 order to have a clear record, we need to use names. So when I
20 ask somebody a question by name, only that person should
21 respond.

22 So Mr. Licul, who is taking the lead?

23 MR. LICUL: Mr. Crain.

24 THE COURT: Thank you. I could understand neither of
25 you when you speak over each other.

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1 So Mr. Crain, if you could please give me an update as
2 to where things stand from your point of view.

3 MR. CRAIN: Certainly, Your Honor. We have now
4 offered to produce responsive texts. These texts will cover
5 the entirety of the Brown subpoena, and they'll cover all
6 relevant document requests that have been made to us on the
7 topic -- Trooper 1, on the topic so far.

8 And I'll point out that this is not the first time
9 we've disclosed that we have these documents. As we put in our
10 letter, we very clearly disclosed that we were withholding
11 documents pursuant to objections. There are objections to
12 scope very similar to the ones that the witness here wound up
13 lodging against very similar requests.

14 And we're able to -- well, and so they should have
15 gone through us to get these, pursuant to the terms of the
16 January 16th protective order. And the bottom line is we can
17 moot out the dispute over the witness subpoena by producing
18 these documents.

19 THE COURT: Well, two follow-up questions. You
20 mentioned that it is your view that the Trooper 1 production
21 would cover the entirety of the dispute, but I'm a little bit
22 unclear as to how that could be, depending upon what text
23 messages Trooper 1 still has in her possession.

24 There have been previous mentions in various filings
25 that Trooper 1 had deleted some of her text messages. And was

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1 that specific to the Nevins question or the Diane Parrotta
2 question? I'm just really unclear about what text Trooper 1
3 has. Does she have all of her text messages with Mr. Brown?

4 MR. CRAIN: She has all of her text messages with the
5 witness, correct. The letter you're referencing from November
6 29th, it was specific to the Nevins letter. There should have
7 been a footnote clarifying that we had these texts. But to
8 reiterate, we were not withholding anything. It's why we filed
9 our letter about this protective order, and it's why we
10 disclosed that we were withholding documents when the documents
11 were sought from us.

12 MS. CHHINA: Your Honor, if I may just respond to that
13 quickly. This is Neesha --

14 THE COURT: State your name.

15 MS. CHHINA: -- Chhina from --

16 THE COURT: State your name.

17 MS. CHHINA: Sorry.

18 THE COURT: Go ahead.

19 MS. CHHINA: I just want to push back on the idea that
20 the prior disclosures to the Court were specific to the Nevins
21 issue. That letter made very clear that Trooper 1 was
22 referring to an interrogatory response she served to us in
23 August of 2023. That response was unequivocal that she had
24 searched for and produced all responsive communications on her
25 iPhone, as well as on two email accounts, a personal and work

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1 email account, and that she had no communications from her
2 BlackBerry that she used prior to 2019.

3 So there is no basis for us to believe, based both on
4 Trooper 1's communications to the Court, in November of 2023,
5 and in her interrogatory responses from August of 2023, that
6 she was withholding any communications that were either email
7 communications or text communications.

8 And it's only now, for the first time, that that
9 letter is being characterized as something specific to Nevins
10 or that -- and it doesn't make sense that that letter would be
11 specific to Nevins, because it was referring to an
12 interrogatory response that was much broader than just the
13 Nevins issue.

14 THE COURT: Well, he mentioned the November 2023
15 letter not the August 2023 interrogatory response. Is it
16 possible that the August 2023 interrogatory response is
17 somewhere in the filings in this case? But are you suggesting
18 we need to have a hearing on this question, Ms. Chhina?

19 MS. CHHINA: I'm suggesting --

20 THE COURT: Or are you willing to take the
21 representation that they have the text messages?

22 MS. CHHINA: I'm suggesting that their representation
23 that they have text messages that cover the entirety of the
24 Brown subpoena should be interrogated a little further. I'm
25 not sure that -- it seems odd to me that Trooper 1 would make

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1 prior representations to us, in interrogatory responses, and to
2 the Court, in multiple updates, that they've searched for and
3 produced all communications that are responsive on her iPhone.
4 They have no responsive text messages.

5 And now, only when this joint dispute has been raised
6 by the Court, are they saying that they have communications
7 with Mr. Brown, and that she has all communications with Mr.
8 Brown, but she has no communications with any other witness in
9 this case.

10 But we know from her phone records that we received
11 recently, for example, that she was regularly in contact with
12 other troopers who were witnesses in this case. We've received
13 none of those communications. And Trooper 1's counsel is not
14 now saying that they have those communications. They're only
15 saying they have communications with Mr. Brown. And to me, the
16 logic of that is just difficult to understand.

17 So I think the representation that Trooper 1's
18 production to us, which they have described as being a few
19 dozen PDF pages that they have of communications between her
20 and Mr. Brown, that that would cover the entirety of what we're
21 seeking in the Brown subpoena, I'm not sure that that
22 representation should be accepted on its face.

23 THE COURT: I don't know that I can accept any
24 representations on their face. The problem is that you guys
25 have an inability, it seems, to communicate effectively in the

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1 meet-and-confer process. And now you're asking me to try to
2 make a determination with zero underlying documentation as to
3 what's true and not true.

4 That was my question as to whether or not you wanted
5 to actually have a hearing on this question, because the point
6 of civil discovery, and the point of the protective order that
7 I issued a few weeks back, was that the parties need to do this
8 on their own. You cannot come to the Court with every subpoena
9 and every dispute and expect that I am somehow going to be able
10 to get to the bottom of whether or not there is a production
11 that is somehow lacking when I literally don't even have the
12 documents.

13 That is one of the many challenges inherent in these
14 civil discovery disputes. I don't have the documents. I don't
15 have your RFPs. And so to suggest that the Court can somehow
16 make this determination, prior to the parties meaningfully
17 meeting and conferring on it, which I directed the parties to
18 do as part of my January 16th protective order here, really is
19 concerning.

20 All of that said, Mr. Crain, would you like to respond
21 to Ms. Chhina?

22 MR. CRAIN: Yes. So just briefly, and to keep things
23 as focused as possible on the current dispute, the
24 interrogatory response said that we had disclosed everything on
25 the phone. It was true when we served the subsequent responses

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1 to requests for production when we said we were now withholding
2 documents that were responsive. Opposing counsel mentions
3 every last communication except the one that was put in their
4 hands saying that we objected and withheld documents.

5 So we have met and conferred now. We've suggested a
6 narrow scope, and we're prepared to produce the documents as
7 quickly as possible. We will also undertake to ensure that
8 there are no more responsive documents of any kind or
9 communications, that we've updated all prior objections and
10 responses, and that there's nothing remaining. And we will
11 cooperate with opposing counsel on any kind of quality control
12 process that the parties can agree to that's reasonable.

13 THE COURT: So with regard to the BlackBerry, Mr.
14 Crain, is it correct that she has no text messages before 2019
15 that were utilized on her BlackBerry?

16 MR. CRAIN: That's correct, yes.

17 THE COURT: Okay. So the question that I have, with
18 regard to the representation that you believe you're in a
19 position to produce all responsive documents, is there a time
20 frame included here with regard to the communications between
21 Mr. Brown and Trooper 1?

22 I'm looking at document request number 1, which was
23 filed as an attachment document to 234. So it's ECF number
24 234-2 is the sealed version. I believe there was just some
25 minor sealing issues relating to one sensitive matter. So

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1 looking at that version, I don't see a time frame.

2 So Mr. Crain, what is your -- how does your
3 representation square with the missing BlackBerry?

4 MR. CRAIN: So I thought I had said that we would
5 object to anything from before January 1st, 2018. In any case,
6 these communications were on her personal phone not her
7 BlackBerry.

8 THE COURT: She wasn't utilizing her BlackBerry to
9 communicate with Mr. Brown?

10 MR. CRAIN: No, she was not.

11 THE COURT: Okay. All right. So in terms of the time
12 frame, your position, sir?

13 MR. CRAIN: I'm sorry, was this question addressed to
14 me?

15 THE COURT: Yes.

16 MR. CRAIN: To John Crain?

17 THE COURT: Yes.

18 MR. CRAIN: Our position is that the proper time frame
19 is January 1st, 2018 to the present.

20 THE COURT: 2018?

21 MR. CRAIN: January 1st, 2018 to the present, yes.

22 THE COURT: Okay. Ms. Chhina, would you like to
23 respond to Mr. Crain's representations?

24 MS. CHHINA: Yeah. Your Honor, this is Neesha Chhina.

25 My one thought on Mr. Crain's representation is

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1 they're still objecting to producing documents on two
2 categories that we think are key to Governor Cuomo's defenses
3 in this case, the first being documents between Mr. Brown and
4 Trooper 1, communications between Mr. Brown and Trooper 1
5 regarding Governor Cuomo, and the second being communications
6 between Mr. Brown and Trooper 1 regarding her employment at the
7 New York State Police, including her employment in the PSU and
8 her transfer to the travel team.

9 So Trooper 1 has not agreed to produce all
10 communications between her and Mr. Brown that are responsive to
11 our subpoena request. She is still maintaining objections to
12 those, and we have not resolved that issue. If the Court is
13 willing now to make a ruling that those categories of documents
14 are relevant and should be produced, I think that puts us in a
15 slightly different posture.

16 MR. CRAIN: This is John Crain. Yes, as we --

17 THE COURT: Hold on, hold on, hold on.

18 MR. CRAIN: I apologize.

19 THE COURT: Ms. Chhina, what you just stated, you
20 stated at the outset; in the letter, you identified two
21 categories of documents, communications that were --
22 purportedly the two categories as to which you were at an
23 impasse. One was the communications regarding Governor Cuomo,
24 just period, right, subcategory (i) of document request number
25 1, or subcategory (a), depending on which list you're looking

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1 at, of document request number 1.

2 And then the second thing identified in your letter
3 was communications regarding twenty-six colleagues. Now you're
4 talking about something different, which is information
5 regarding her employment with the New York State Police, the
6 travel team, et cetera. So can you please enlighten me as to
7 what precisely still remains in dispute from your point of
8 view?

9 MS. CHHINA: Yes, sorry, I apologize. This is Neesha
10 Chhina.

11 Sorry. I apologize, Your Honor. There's a slight
12 difference between what's in dispute with respect to the
13 subpoena to Mr. Brown, and the dispute between us and counsel
14 for Mr. Brown, and what remains in dispute between us and
15 counsel for Trooper 1 with respect to her production of
16 communications with her and Mr. Brown.

17 So I thought we were speaking about Trooper 1's
18 production to us of the communications between her and Mr.
19 Brown, and she has not agreed to produce all of those
20 communications that are responsive to our document requests to
21 her. And that remains an issue.

22 With respect to the Brown subpoena, and the subpoena
23 that we issued to Mr. Brown, the two things you just
24 identified, communications concerning Governor Cuomo and
25 communications concerning those twenty-six state troopers,

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1 those are the issues that are in dispute with counsel for Mr.
2 Brown.

3 THE COURT: Okay. So there's really three categories
4 in play vis-a-vis the communications between Mr. Brown and
5 Trooper 1; is that fair?

6 MS. CHHINA: Sorry, can you repeat that?

7 THE COURT: There's really three categories in dispute
8 vis-a-vis the communications between Trooper 1 and Mr. Brown,
9 depending upon who is producing them; is that right?

10 MS. CHHINA: Yes, that's fair.

11 THE COURT: Okay. So Mr. Crain, would you like to
12 respond?

13 MR. CRAIN: This is John Crain.

14 That is an accurate description, yes. So there's a
15 dispute that tracks closely the dispute that would have been
16 between the witness and Cuomo about all communications between
17 the two regarding Governor Cuomo. We also object that that's
18 overbroad.

19 There's then also the request, the second request
20 mentioned, which was for everything involving her employment or
21 the PSU. That is not squarely in the Brown subpoena, but it's
22 in dispute between the parties, and we object to that as well
23 as overbroad.

24 THE COURT: What is your position with regard to the
25 twenty-six troopers?

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1 MR. CRAIN: We would object as well, in principle, but
2 I believe there's nothing responsive in any case. If we're
3 just talking about the communications between Trooper 1 and the
4 witness, there would not be anything responsive, and I can -- I
5 will triple check to make sure that this is true.

6 THE COURT: So just to be clear, she doesn't have text
7 messages, in your assessment, with Mr. Brown, talking about --
8 random selection from the list -- Stephen O'Mara (ph.)? Those
9 communications don't exist; is that what you're saying?

10 MR. CRAIN: Correct.

11 THE COURT: All right. So I have no way of knowing
12 whether or not there are text messages between Mr. Brown and
13 Trooper 1 regarding these twenty-six people. I did note that,
14 in one of the documents that was provided from -- I believe, it
15 was an email from Ms. Koistinen, pertaining to Mr. Brown's
16 objections to the searching for communications, that she had
17 suggested a list of five or six names, including Diane
18 Parrotta.

19 Ms. Chhina, have the parties done any meaningful
20 effort to limit this list? Twenty-six people is really a lot
21 and of marginal relevance. It really just feels like, without
22 knowing in detail who these people are or why mention of them
23 in a communication between Trooper 1 and Mr. Brown, it seems
24 pretty far afield.

25 MS. CHHINA: Your Honor, this is Neesha Chhina.

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1 I just want to touch on one thing regarding the date
2 range before I answer your question. I just want to make sure
3 we don't lose that in the thread. With respect to the date
4 range of being from January 2018, I want to point out the fact
5 that Trooper 1 claims in her allegations to have been singled
6 out by the governor and recruited to the PSU in around November
7 of 2017. And so, as far as date range goes, I think that the
8 most appropriate -- if we're going to have a date range
9 limitation, the most appropriate date range limitation is
10 something around a start of time of November 2017.

11 But to answer your question specifically now on those
12 twenty-six troopers, so you'll note that our original Brown
13 subpoena request was broader than that. We met and conferred
14 with counsel for Mr. Brown. In the first instance, he asked
15 for a list of specific troopers rather than just communications
16 with any of her colleagues. So that list was a more narrow
17 list than what the original request was.

18 Mr. Crain's representation to the Court that there are
19 no communications responsive to this request, I think, actually
20 highlights here the issues that we're having, not just with
21 this subpoena, but with many of the nonparty subpoenas in this
22 case.

23 Counsel for Mr. Brown has -- when we tried to meet and
24 confer to discuss this list of twenty-six troopers further,
25 counsel for Mr. Brown said that it would be overly burdensome

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1 to search for these twenty-six troopers, that there -- and
2 wouldn't tell us, for example, how many hits would come from a
3 search of these twenty-six troopers.

4 And so it makes it incredibly challenging for us to
5 even evaluate the burden of production for nonparties in these
6 kinds of requests when we're not provided this type of
7 information. So it's hard to understand how an objection on
8 the basis of burden can comport with the idea that Mr. Crain is
9 saying now, which is that there's no responsive documents to
10 this request.

11 I mean, I understand that, on its face, a list of
12 twenty-six can appear to be large. These are all troopers that
13 Trooper 1 identified as individuals with whom she communicated
14 about her allegations, in her interrogatory responses, or who
15 were witnesses in her interrogatory responses, or came up
16 during depositions as troopers relevant to her allegations.

17 So it's not a list that comes from nowhere. It's a
18 list that is relevant to the claims and defenses in this case.
19 And the burden seems to be none if there is no responsive
20 documents. But it's just challenging for us to be able to even
21 engage with the nonparties on these issues if they're not
22 willing to provide us with information about the scope of
23 potentially responsive documents they have.

24 THE COURT: There's two concerns there, though. It's
25 not just burden. They state very clearly in the email from Ms.

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1 Koistinen that it's also overly broad. And it is your burden
2 to establish relevance. Telling me these names have come up is
3 not sufficient to establish the relevance of communications
4 that mention twenty-six people with no subject limitation.
5 Maybe they're going to go out to lunch. Who cares if they're
6 going out to lunch? Irrelevant. It doesn't need to be
7 produced.

8 The production burden is not simply the physical
9 turning over of the documents that have been found. It's also
10 the search process, and it's the fishing expedition nature of
11 all of this that is concerning. If you have a list of names
12 that you actually think are the core allegations, and/or you
13 can limit by subject matter, that may be a different question.
14 But at this moment, the Court has very little basis on which to
15 rule that these twenty-six names are relevant based on the
16 representations that have been provided so far.

17 In response to your request, Mr. Brown's attorneys
18 have suggested a narrowing of the list or a meet-and-confer.
19 There's been suggestion of providing some sort of subject
20 matter limitation as to these additional people. All of those
21 seem like good strategy in terms of trying to come up with a
22 subset of documents that actually might have something to do
23 with this case. You don't just get everybody's text messages
24 because the name came up and you need to stop thinking that
25 way. Is that clear, Ms. Chhina?

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1 MS. CHHINA: Yeah, Your Honor. Yeah, I understand --
2 I understand your point. I think there's a little bit of
3 misunderstanding of how the meet-and-confer process went here.
4 So I just want to clarify that for the Court. We provided this
5 list of names as a starting point for the meet-and-confer. We
6 went into a second meet-and-confer with counsel for Mr. Brown,
7 and we asked them to provide additional information about what
8 the volume of documents would be if this list of names was
9 used.

10 I think your point as to, if they're going for lunch,
11 and the volume of communications not just being something that
12 we're entitled to, carries more weight if the volume is
13 something extremely high. If you run a search for twenty-six,
14 names and those twenty-six names, in the communication, return
15 only three or five documents, then it wouldn't appear that
16 there is -- like, the proportionality concerns there seem much
17 lower to me. I'm not --

18 THE COURT: It doesn't make them relevant.

19 MS. CHHINA: But how --

20 THE COURT: If it has nothing to do with this case,
21 it's not relevant.

22 MS. CHHINA: We were not opposed to proposing search
23 terms in connection with these twenty-six troopers. We were
24 hung up on by counsel for Mr. Brown during the meet-and-confer
25 process. And I think that there is a misunderstanding here

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1 about our efforts to meaningfully engage in narrowing the
2 subpoena. We don't want to come before you with discovery
3 dispute after discovery dispute. We're trying to keep this
4 process moving.

5 THE COURT: Request number 2 --

6 MS. CHHINA: It's really our goal here --

7 THE COURT: Request number 2, "All communications
8 between you and Trooper 1 concerning any of Trooper 1's current
9 or former NYSP colleagues, including, but not limited to Diane
10 Parrotta. How are communications between Trooper 1 and her
11 fiance, regarding her colleagues in general, relevant to the
12 harassment allegations in this case? I'm sorry; it is just way
13 too far afield.

14 And your efforts to narrow the names do very little in
15 terms of narrowing the relevance of the communication.
16 Colleagues speak about any number of matters. That doesn't
17 make them relevant. You don't get all of her communications
18 because she filed a sexual harassment case. It's not how this
19 works.

20 MS. CHHINA: But --

21 MS. GLAVIN: Your Honor? Your Honor, this is Rita --

22 THE COURT: Is that Ms. Glavin?

23 MS. GLAVIN: Yes. Could I be heard on this issue
24 briefly?

25 THE COURT: Yes.

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1 MS. GLAVIN: Okay. A couple of things. One is, Your
2 Honor, I want to be clear, we're not engaged in a fishing
3 expedition. But what has happened here is that nobody --
4 nobody is giving us anything. And what we do know, and that's
5 why we've had to do interrogatories to Trooper 1, who have you
6 communicated with about your allegations or who are witnesses
7 to the events described in the complaint. The list we came up
8 with was designed around her responses.

9 How this would normally go in a meet-and-confer, and I
10 was on the call, is that I would expect, because this is what I
11 would do if I were asked to do this as a third-party, I would
12 talk to my client and say, here's a list of twenty-six names;
13 do any of these jump out at you? Do any of these have any
14 relevance? Can we narrow these?

15 That's not what's happening. What happens is that the
16 third party will say to us, you tell us. And it's hit or miss
17 with us. So the meet-and-confers, Your Honor, we have tried.
18 And it's not just with Mr. Brown's counsel -- who we understand
19 Mr. Brown's counsel works very closely on a regular basis with
20 the Wigdor firm. It's not just with Mr. Brown's counsel. This
21 has been pretty coordinated, and we have -- by a number of the
22 third parties.

23 So if you're frustrated, I share your frustration. I
24 share it because we now know -- and I do want to make a record
25 on this -- the phone records that we have been arguing about

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1 for months, from Trooper 1, we now have those phone records
2 from Verizon. I'll tell you what those phone records show on
3 first glance. They show that Trooper 1 was in repeated
4 communication, by voice mail and text, with other witnesses who
5 were troopers, including witnesses that we have deposed in this
6 case. And she was in touch with them by text and telephone
7 before and after those individuals went in for interviews with
8 the Attorney General's office. We see that throughout the
9 months of the investigation. We see communications between
10 Trooper 1 and others, including Parrotta, at the time she filed
11 her lawsuit.

12 So we know that Trooper 1 had text exchanges at
13 critical times with critical witnesses in the case. None of
14 them have been produced to us. And so I will tee up for you
15 that -- you've told us we can't get phone records without an
16 order -- we're going to be asking for more phone records based
17 on what we're seeing in those communications.

18 And what is particularly upsetting is that the state
19 police sent out to the PSU -- and Trooper 1 received this on
20 March 16th of 2021. There was a preservation order. There was
21 a direction to all the PSU members that they were to preserve
22 any communications relating to the allegations or the AG's
23 investigation.

24 And we see that Trooper 1 is communicating with Diane
25 Parrotta who went in and was interviewed on April 12th. We see

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1 her communicating right before and on the day of her interview,
2 with text and on the phone, but not a single one was produced.
3 So we know these things exist.

4 Here's the other frustrating thing about text messages
5 that I'm seeing as I look at text communications. I can use
6 Lindsey Boylan as an example. When I look at the text
7 communications, they are not particularly amenable to search
8 terms because people speak in shorthand.

9 So when you say, for instance, it's irrelevant, Ms.
10 Glavin, that so and so said let's have lunch today, well, it
11 becomes particularly relevant to us if it is the lunch with
12 Diane Parrotta that they had after Diane Parrotta received her
13 subpoena that Diane Parrotta testified about in her testimony.

14 So I am frustrated, as you are, because it is clear to
15 me, from looking at Trooper 1's phone records, that she deleted
16 a host of relevant texts. What else was she texting with
17 Fabricio Plaskocinski about in April of 2021, when he's going
18 into his interview, when she had not -- what is she talking to
19 Chris Long (ph.) about, when he's going in for his interview,
20 when she hadn't communicated with him for a while.

21 So we know these things are there, and we know Trooper
22 1 doesn't have them because she doesn't produce them. So we're
23 trying to reverse engineer this. I would love to have a
24 meaningful meet-and-confer with Charlie Brown's attorneys to
25 say, hey, have you talked to your client? Who did she talk

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1 about? She may not have even talked about all twenty-six of
2 the people on the list that we created from her
3 interrogatories. And then come back to us and say this is who
4 I remember she would talk about.

5 She talked about Parrotta. I'm very interested in
6 communications, of course, about Parrotta, about whether she
7 trusted her, about what Diane Parrotta was saying to her before
8 Trooper 1 went forward, about why it is that Diane Parrotta had
9 Trooper 1 call Major Nevins, who she never worked with, about
10 coming forward with her allegations.

11 So I just want to disabuse the Court and the notion,
12 because it keeps coming on us. And I'm so frustrated. And I
13 think I've said this to you before. This doesn't happen in
14 criminal discovery. I'm pretty outraged by it, but it has been
15 coordinated to get us in every instance to say give me a name
16 and I'll give you this. We've been blocked all over the place.

17 Our communications with Charlie Brown's counsel, back
18 and forth, went on for weeks. And Wigdor was cc'd on these
19 emails, and they never raised their hand to say, hey, we have
20 these and there's, like, twelve of them. So I just wanted to
21 make a record because I'm as frustrated as you are.

22 THE COURT: Mr. Crain, would you like to be heard?
23 And then I'd like to hear from counsel for Mr. Brown if he has
24 anything -- if he or she has anything to say.

25 Mr. Crain?

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1 MR. CRAIN: Yes, very briefly. I think we're going
2 far afield. I think this is one conference we've had in this
3 case that was fairly close to remaining focused on the actual
4 issues today. I think what you heard from counsel for Cuomo is
5 that they resent the fact that other people won't carry their
6 burden of establishing the relevance of document requests.
7 That was the basis of the entire complaint, essentially.

8 There's a joke that, if you think every roommate
9 you've ever had is a bad roommate, maybe you're the bad
10 roommate. I don't think it's a coincidence that now, not just
11 us, but multiple witnesses have very similar objections to
12 scope and to relevance.

13 THE COURT: That is entirely nonresponsive to the
14 issues that Ms. Glavin raised, Mr. Crain. Is there anything
15 else you'd like to add?

16 MR. CRAIN: Well, is there anything that the Court is
17 concerned with in any of Ms. Glavin's representations, because
18 she --

19 THE COURT: What I'm concerned --

20 MR. CRAIN: -- said a lot and --

21 THE COURT: What I'm concerned with, Mr. Crain, is the
22 parties' difficulties with the meet-and-confer process and the
23 notion that here we are, two years into discovery, only to
24 learn that -- I mean, Ms. Glavin is saying it's new to them,
25 Ms. Chhina is saying it's new to them. I certainly was unaware

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1 that there are apparently responsive text messages in
2 plaintiff's possession that have not yet been produced.

3 And so it's concerning on many levels that the parties
4 have not gotten to this point in discovery on their own, and
5 that this is coming up. It almost feels like a sideswipe, in
6 the context of trying to address the issues pertaining to Mr.
7 Brown, to learn that the plaintiff herself may have responsive
8 documents that they've been trying to get for months from Mr.
9 Brown. So I really am concerned about how this process is
10 unfolding, Mr. Crain.

11 MR. CRAIN: Well, I will address that, certainly. I
12 understand the Court's concerns. I would just emphasize,
13 again, that we put a document in their hands saying that we had
14 responsive materials. And it was the best disclosure we could
15 make, and it was a proper disclosure. They didn't follow up on
16 it. We were surprised that they didn't follow up on it. It's
17 why we filed this letter with the Court.

18 THE COURT: So to be clear --

19 MR. CRAIN: They knew about this objection. They
20 mentioned this objection at a December 12th conference. They
21 said we have this objection from Trooper 1, so we're doing
22 subpoenas instead, because we don't want to address that
23 objection. I mean, they knew of the objection, and they knew
24 that we were withholding documents.

25 MS. GLAVIN: Your Honor, this is Rita Glavin, if I

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1 might be heard briefly in response.

2 THE COURT: Yes.

3 MS. GLAVIN: I just don't get it, okay? I feel like
4 we're aiming at a target that keeps moving here. We served a
5 subpoena to Charlie Brown months ago, in August, for these
6 communications. Why didn't Trooper 1 raise her hand and say,
7 hey, it looks like I have some responsive communications; I'll
8 turn them over to you.

9 We then go through a whole meet-and-confer, and I find
10 it very difficult to believe that Charlie Brown's attorneys,
11 again, who work very closely with the Wigdor firm -- and my
12 guess is that Wigdor probably asked Mr. Mintzer if he would
13 represent Trooper 1's fiance.

14 I find it very difficult to believe that, through that
15 meet-and-confer, there wasn't somebody saying -- they didn't
16 ask us, particularly when we were on the meet-and-confers with
17 Charlie Brown's lawyers, and she kept saying to us go to
18 Trooper 1. And our response was Trooper 1 doesn't have text
19 messages. They've told us this repeatedly, all this time
20 knowing this -- like, just why is it that we see the letter?

21 And I'll tell you, my head popped off last week when I
22 saw that letter. And I'm, like, they had these all this time.
23 And we went through that whole process and did a letter, and
24 we're finding out about it now.

25 The reality is it's now water under the bridge. We

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1 know Trooper 1 had responsive text messages. They were
2 withheld. And let me add this; they weren't just withheld from
3 us. I've seen the document requests from the New York State
4 Police, and I'd be curious to hear their views on this, because
5 her text messages with Charlie Brown would be responsive to
6 their document request. And perhaps Mr. Steele wants to weigh
7 in.

8 But the reality is Trooper 1 needs to produce these.
9 I don't know why we're even in this conference today, and they
10 haven't provided the text messages, at least the ones they're
11 willing to give to us, already. And we can go from there. But
12 this has been par for the course.

13 I feel like it's the movie *Any Given Sunday*, and it's
14 the Al Pacino speech where he says, we have to fight, scramble,
15 scratch for every inch on the football field. Stuff that is
16 basic discovery, we're not getting. And I feel like we're in a
17 death wrestle to get it.

18 And so I think Trooper 1 needs to produce all of the
19 responsive texts with Charlie Brown now. I would like to know,
20 given what we have now seen in Trooper 1's phone records, about
21 her fastidious texting, around the times of the Nevins
22 interview, around the times of the Parrotta interview, around
23 the times of the Plaskocinski interview, around the times of
24 the Chris Long interview, around the times of the Kyle
25 Shillingford interview, where are all those text messages?

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1 Because why is it that Fabricio Plaskocinski is
2 talking to Trooper 1 right before he goes into the AG's office
3 and right after he gets out? And why has nothing been
4 produced, particularly when there was a preservation order that
5 was issued to the PSU? Why didn't Trooper 1 preserve those
6 texts?

7 So I just think they need to be produced. And this is
8 why we end up having to go to third parties, because Trooper 1
9 destroyed her texts, didn't keep them.

10 THE COURT: Mr. Crain?

11 MR. CRAIN: I think there's a lot of sound and fury,
12 and it's just to distract from what was essentially either a
13 bad-faith or a negligent response to receiving a document that
14 said we object and we are withholding documents. This is the
15 one thing they will not address. It was a proper objection.
16 It was a proper disclosure.

17 However, we agree on something. We are prepared to
18 produce the texts that we mentioned, subject to objections
19 about allegations of misconduct, investigations, and reports,
20 allegations in the complaint, and this action between Trooper 1
21 and the witness.

22 And we would also agree with Neesha's suggestion that
23 those go back slightly further than the range we suggested,
24 which was January 1st, 2018. We agree that they can go back to
25 November 1st, 2017.

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1 THE COURT: But you do not agree, at this juncture, to
2 provide all texts concerning Governor Cuomo going back to
3 November 2017? You're still objecting to subcategory (1) or
4 (a), depending on which list you're looking at?

5 MR. CRAIN: Correct. We maintain that objection.

6 THE COURT: Why?

7 MR. CRAIN: Because there is various communications
8 that have no bearing on the case and not even remotely. She
9 was on --

10 THE COURT: How much --

11 MR. CRAIN: She was on the PSU for a long time.

12 THE COURT: I understand she was on the PSU for a long
13 time, but they're looking to understand the interactions that
14 she had with Mr. Cuomo and the trooper's attitudes towards Mr.
15 Cuomo at various points in history. So what is the basis for
16 your objection to exclude that first category?

17 MR. CRAIN: It's overbroad and not proportional to the
18 needs of the case, because the conversations about just Cuomo
19 in general have no real bearing on any of the allegations. But
20 your point is taken, and if the Court orders it, we can produce
21 these.

22 THE COURT: Without knowing what exists, that would be
23 just generic chit chat, like, I just got off my detail with
24 Governor Cuomo, okay, plain vanilla, right, plain vanilla
25 mention of Governor Cuomo. Without knowing how many such text

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1 messages exist, it's hard for the Court to evaluate burden and
2 proportionality.

3 What I do know and agree with Governor Cuomo about,
4 Mr. Crain, is that shifting attitudes towards the governor are
5 relevant. So if there are messages in the past where Governor
6 Cuomo is described in laudatory terms, that would be squarely
7 relevant to the issues in this case.

8 And we're not going -- I don't know that it is in
9 anybody's interest to split hairs in terms of trying to produce
10 some narrow subset of documents touching upon Governor Cuomo
11 versus all, given the history of the discovery here and how
12 fraught it has been. I think that would be walking a very fine
13 and dangerous line.

14 And I also have no sense of how many "nonresponsive"
15 documents would even exist discussing Governor Cuomo. Do you
16 have a sense of that burden and whether or not that would be a
17 significant number or a small number, Mr. Crain?

18 MR. CRAIN: Yes. So the vast majority are covered by
19 the items we don't object to, so allegations of misconduct,
20 investigations reports, the allegations in the complaint and
21 the action. There are another handful, perhaps amounting to a
22 few dozen PDF pages, that are just about Cuomo generally.

23 THE COURT: I do not find that to be a burden. You're
24 going to turn over everything in regard to her text messages
25 pertaining to Governor Cuomo. With regard to the twenty-six,

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1 it is your position -- and the date range should be the date
2 range that Ms. Cheena suggested, going back to November 2017.

3 With regard to the list of twenty-six names, I still
4 am at a loss as to what to do. Okay. So it's been represented
5 by Mr. Crain that there really aren't any responsive text
6 messages in Trooper 1's possession with Mr. Brown -- text
7 messages with Mr. Brown discussing these twenty-six.

8 So that is the narrow issue we're here to discuss
9 today, Ms. Glavin. I don't know whether these other folks that
10 you may seek to subpoena have counsel. I don't know whether or
11 not there have been conversations with their counsel. But if
12 there are no responsive documents in Trooper 1's possession
13 regarding these twenty-six names, obviously she can't produce
14 them.

15 What we haven't done is heard from the state police or
16 counsel for Mr. Brown. So Mr. Steele, who's taking the lead
17 today on behalf of the State police?

18 MR. MOORE: Your Honor, this is Dan Moore. We support
19 the defendant, Governor Cuomo's, position on this. In fact, we
20 were concerned as well because our initial discovery demands, I
21 believe, were broad enough, based on the information we have,
22 to cover these texts. And so it is somewhat concerning to
23 learn now, after all these years, that these texts are out
24 there and have not been produced.

25 THE COURT: Okay. And anything further, Mr. Moore?

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1 MR. MOORE: No, that's all I have, Your Honor.

2 MS. GLAVIN: Your Honor, this is Rita Glavin. On that
3 issue, could I just be heard briefly?

4 THE COURT: Which issue?

5 MS. GLAVIN: The issue with respect to the text
6 messages that Trooper 1 may have versus what Mr. Brown may
7 have.

8 THE COURT: Yes.

9 MS. GLAVIN: What I think would be helpful is if the
10 Court could inquire, has Trooper 1's counsel conferred with
11 Charlie Brown's counsel such that all of Charlie Brown's text
12 messages with Trooper 1, do they overlap entirely? In other
13 words, did Trooper 1 delete any text messages that may be
14 responsive with Charlie Brown?

15 THE COURT: That is actually part of what I wanted to
16 discuss with Mr. Brown's attorney, Ms. Glavin.

17 MS. GLAVIN: Okay. All right. Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. GLAVIN: No.

20 THE COURT: Okay. So Mr. Brown, you've heard Ms.
21 Glavin's question. I had the same question. I don't know, and
22 I will certainly loop back to Trooper 1 and ask a similar
23 question. But in terms of the text message universe that is in
24 Mr. Brown's possession with regard to Trooper 1 -- in
25 communication with Trooper 1, I should say, who is taking the

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1 lead today, Mr. Mintzer or Ms. Koistinen?

2 MR. MINTZER: It's Mr. Mintzer. Thank you, Your
3 Honor.

4 THE COURT: Okay. So could you enlighten me, please,
5 as to what universe of text messages you have had an
6 opportunity to locate with regard to your client? And do you
7 know the answer to the question as to whether or not they cover
8 the relevant time frame, November 2017 to the present?

9 MR. MINTZER: Well, Your Honor, we've looked at what
10 our client has and have instructed him, obviously, to preserve
11 everything. I have not done a comparison to what we just
12 learned that Trooper 1 did.

13 And just to clarify, because there was some mention of
14 it earlier, we had no idea that there were any outstanding text
15 messages that the plaintiff had in her possession. Based on
16 the representation from Defendant Cuomo, we were proceeding in
17 our discussions with them on the premise that they couldn't get
18 this material from the plaintiff.

19 So we don't have -- to answer your direct question,
20 Your Honor, I don't know what the plaintiff has. I heard the
21 representation this morning that she's maintained her text
22 messages with Mr. Brown. And so I have no reason to think that
23 that's different than what we have.

24 THE COURT: Okay. But you haven't -- I mean, how
25 many -- what's the volume here? I can't even imagine what five

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1 years of text messages look like between two people who are
2 close. I mean, have you done a search term, sort of, analysis,
3 or have you just -- you just had it preserved and you haven't
4 really done a lot of searching?

5 MR. MINTZER: So we've done the searches on the first
6 category. And I think it's fair to say that our belief about
7 what exists is similar to what Mr. Crain described earlier,
8 right, that it's pretty limited.

9 And so just to clarify, Your Honor, our objection on
10 the first one was really more towards relevance not burden. I
11 think Your Honor's ruling on the scope of what should be
12 produced was directed to the plaintiff as a party.

13 I think that, as a nonparty being asked to produce any
14 text messages without a date, a limitation as to date or
15 subject matter, that may just merely mention Mr. Cuomo, was not
16 an appropriate request. It was overly broad and not properly
17 limited time and subject matter.

18 But the answer to the question about what exists, I
19 think, on that one, it's a relatively limited amount. I have
20 not -- we have not undertaken to do a search for the twenty-six
21 people that they've "limited" their request to, for the very
22 reason that Your Honor identified earlier in this call, is that
23 the burden there is actually in the requested search process.

24 And as Your Honor also pointed out, we intended to
25 engage with counsel for Governor Cuomo in a real lawyer-to-

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1 lawyer good-faith discussion, what do you really need here?
2 Give us five or six names. Give us something reasonable. And
3 they refused to do that.

4 And now I hear from Ms. Glavin this morning that she
5 thinks the burden should have been on us to tell her what
6 really they should want. Forgive me, I've never heard of
7 anything like that. They are the ones seeking discovery. They
8 are a party to the case. My client is not. They need to tell
9 me what it is that they think is actually relevant.

10 Just throwing out a list of twenty-six names of,
11 potentially, people that she -- that my client and Trooper 1
12 might have communicated about, who she works with is, on its
13 face, absurdly overbroad. And so, despite our request to try
14 to get them to be real about this, they've refuse to. And
15 that's why we're here.

16 THE COURT: Understood. So in terms of next steps, it
17 seems very clear that Trooper 1 needs to produce the text
18 messages that are responsive to the subpoena that was issued to
19 Mr. Brown, with regard to request number 1 of the document
20 requests that were sent to Mr. Brown.

21 In terms of requests 2 and 3, Mr. Brown -- I'm sorry,
22 Mr. --

23 MR. MINTZER: Mintzer?

24 THE COURT: On behalf of Mr. Brown, Mr. Mintzer,
25 number 2 is this communications between you and Trooper 1

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1 concerning the list of twenty-six, which we've already
2 discussed. And my understanding is that those are really the
3 two areas of dispute. Is that correct, Mr. Mintzer?

4 MR. MINTZER: Yes, Your Honor.

5 THE COURT: Okay. So at this juncture, Ms. Glavin and
6 Ms. Chhina, this Court is not prepared to say that text
7 messages pertaining to all twenty-six of these people are
8 relevant and proportional to the needs of the case. You have
9 given no context as to who precisely these people are and how
10 communications about them, between these two people, could be
11 relevant and proportional to the needs of the case.

12 As I mentioned a moment ago, and Mr. Mintzer echoed,
13 it's not merely the volume of production that is the issue.
14 It's the searching and the efforts to determine what exists
15 that creates some of the burdens on nonparties, particularly in
16 situations like this where the lists are long, overly broad,
17 and it really just feels, in some ways, like a fishing
18 expedition.

19 Perhaps the phone records will help narrow the issues
20 in some ways, Ms. Glavin. Now you have a more focused set of
21 criteria on which to look at date ranges and the possible
22 relevance that some of these folk's text messages may have. I
23 think the parties are, I'm sure, fully enmeshed.

24 And the determination that I made in the protective
25 order, issued back on January 16th, the documentary discovery,

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1 including nonparty documentary discovery, must proceed. So I
2 encourage the parties to continue to meet and confer. I
3 encourage you to continue to meet and confer with the
4 nonparties, Ms. Chhina and Ms. Glavin. But focusing your
5 requests will yield significantly more results than these
6 extremely broad requests that cause folks to blanch at arguable
7 relevance and really do seem like fishing expeditions to some
8 degree.

9 So I'm not sure there's that much more we can
10 accomplish today. But I do want to give everybody the
11 opportunity to be heard.

12 I didn't ask Ms. Foti if she had anything to add. Ms.
13 Foti, is there anything you'd like to raise?

14 MS. FOTI: No, Your Honor, not on this issue. Thank
15 you.

16 THE COURT: Okay. So --

17 MS. GLAVIN: Your Honor?

18 THE COURT: I hesitate to do the roll call.

19 But Mr. Crain, what else is there to resolve today?

20 MR. CRAIN: Nothing else to resolve. We will hand
21 over the documents, as instructed, from November 1st, 2017
22 regarding Cuomo.

23 I also want to mention that I've heard what the New
24 York State Police has said. We're going to also carefully
25 review all responses and objections to date and make sure the

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1 loop is closed on all of those for all parties.

2 THE COURT: Okay. Thank you for that.

3 And on behalf of Mr. Cuomo, was that you, Ms. Glavin?

4 MS. GLAVIN: Yes, Your Honor. This is Rita Glavin.

5 Two things. One is, with respect to Trooper 1, the
6 Court ordering Trooper 1 to produce the responsive
7 communications with Charlie Brown, I just want to make sure
8 that Trooper 1 has produced all responsive communications.

9 For instance, the list of twenty-six we came up with
10 comes from Trooper 1's interrogatory. Trooper 1 identified
11 those twenty-six troopers as either witnesses to events in her
12 complaint or as individuals she communicated with about her
13 allegations. That's how we came up with that list.

14 And I just want to be sure -- and the reason we went
15 to Charlie Brown is because we got nothing from Trooper 1. I
16 see in her phone records lots of text messaging after the
17 preservation order was issued. And I want to be sure that
18 Trooper 1 has gone through and understands she is to produce
19 communications, not just with Charlie Brown bearing on these
20 issues, but with any other troopers.

21 THE COURT: Have you met and conferred with them
22 recently on this issue, Ms. Glavin?

23 MS. GLAVIN: No, Your Honor, because I had always
24 understood they had done that, based on the production
25 responses. And now I'm very, very concerned.

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1 MR. CRAIN: Your Honor, John Crain. Apologies.

2 THE COURT: Let her finish.

3 MR. CRAIN: May I, Your Honor? I'm sorry.

4 THE COURT: Let her finish.

5 MS. GLAVIN: I just want to avoid us having to come
6 back and go through a process where we all have to write
7 letters to the Court. It's a pain for everybody. And so I
8 just want to make sure that that has been done. I assumed that
9 that was done. And now I'm not so sure after having looked at
10 these phone records.

11 THE COURT: Okay. Mr. Crain?

12 MR. CRAIN: Yes. So I want to mention it's not true
13 that we've never provided responsive documents regarding any of
14 these witnesses. The famous Diane Parrotta texts were texts
15 that we produced, without anyone chasing them, in response to
16 the discovery we received, which we received -- which we
17 produced as soon as they came into existence. So we are going
18 to go back and close the loop on everything, and we can meet
19 and confer about it as well.

20 THE COURT: Thank you for that.

21 MS. GLAVIN: Your Honor?

22 THE COURT: Ms. Glavin, you said two things.

23 MS. GLAVIN: Yes.

24 THE COURT: What was the second thing?

25 MS. GLAVIN: The second item is, in Your Honor's

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1 recent order, you directed us to come to the Court if we were
2 going to do any more telephonic subpoenas. And to cut to the
3 chase, we had walked away because we had the Trooper 1 phone
4 records, to the subpoena for Diane Parrotta's phone records.

5 But now what we have seen in the Trooper 1 phone
6 records, with respect to her communications with Parrotta, we
7 have begun to see a pattern from March -- between March 2021
8 and August of 2021. And then we see more calls around the time
9 that the assembly report is released and Trooper 1 and other
10 complainants testimony is released. We also see similar
11 patterns around the time Trooper 1 filed her lawsuit.

12 But it appears to us that Diane Parrotta was
13 intermittently speaking with Trooper 1, and then Trooper 1
14 would speak to a witness. And we think -- we want to get Diane
15 Parrotta's phone records based on the patterns that we've seen.
16 And we'd like to get a subpoena to her service provider for her
17 phone records for the same time period we have -- actually, for
18 Trooper 1, going back to -- I'd like to get it for 2019 up
19 through Ms. Parrotta's testimony in this case, to just get the
20 phone records that -- basic ones that Verizon would give you.
21 We'd like permission for that subpoena.

22 THE COURT: Does Ms. Parrotta have counsel?

23 MS. GLAVIN: As far as I know, she does not.

24 THE COURT: Mr. Crain?

25 MR. STEELE: Your Honor, this is Joshua Steele.



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1 THE COURT: Yes.

2 MR. STEELE: With respect to Ms. Parrotta, it's my
3 understanding that she has reached out to Attorney Lisa Joslin.
4 I don't know where that stands in terms of representation, but
5 that's her union attorney.

6 THE COURT: I see. Okay. Thank you for that.

7 Mr. Crain --

8 MS. GLAVIN: But we view this -- oh, sorry. We just
9 view this as extremely important, so material to our defense
10 and our theory of the case involving Diane Parrotta's role in
11 this and how these allegations came to be, and communications
12 with troopers who were material witnesses. In or around the
13 time they were going in and speaking with the AG, we see
14 communications with Diane Parrotta and with those troopers in
15 in almost unison.

16 You would have Diane Parrotta on the phone, and then
17 next thing you know, Trooper 1 is talking to Fabricio
18 Plaskocinski, who is a material witness. And we think Parrotta
19 was in touch with each of them as well and communicating with
20 Trooper 1 about what her conversations were.

21 Your Honor may recall it was Diane Parrotta who
22 reached out to Major Nevins to ask him to speak with Trooper 1.
23 And we think she was facilitating these conversations. So we
24 want to get those phone records.

25 THE COURT: Have you deposed Diane Parrotta yet?

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1 MS. GLAVIN: We did. We deposed her months ago. We
2 sent Your Honor some of the video clips.

3 THE COURT: Um-hum.

4 MS. GLAVIN: And we didn't have any of these phone
5 records.

6 THE COURT: I understand that, but I assume you asked
7 her about whether she was in communication with people. What
8 did her testimony establish in that regard?

9 MS. GLAVIN: We believe she lied.

10 THE COURT: What did you ask her?

11 MS. GLAVIN: Your Honor, I don't have the transcript
12 in front of me, but what I can tell you is we believe that
13 Diane Parrotta lied throughout her testimony, in various
14 instances, and I think this is documented in the letter.

15 THE COURT: Which letter? Oh, there are many.

16 MS. GLAVIN: The one --

17 THE COURT: There's so many, Ms. Glavin.

18 MS. GLAVIN: Oh, this is why I just want to serve a
19 subpoena for phone records. I feel like it's -- I don't have
20 her testimony in front of me, but I just was hoping to avoid a
21 letter process and quickly get the phone records we need,
22 because I know Your Honor has the case management plan, and we
23 need these records. And we certainly need them before a
24 Trooper 1 deposition.

25 THE COURT: Have you submitted the case management

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1 plan? I thought you guys got another extension.

2 MS. GLAVIN: We did. I don't think it's due yet. Did
3 we submit it?

4 THE COURT: Yeah, I don't think it's been submitted.

5 At least it wasn't prior to the conference. Unless somebody
6 filed it while we've been on the phone, I don't think it's been
7 submitted yet. So I don't have a sense of the exact cutoff
8 dates.

9 Mr. Crain, is there anything you'd like to say in
10 response to all of this at this point?

11 MR. CRAIN: Just that the protective order requires
12 that they give one week's notice to Ms. Parrotta if they intend
13 to pursue those records.

14 I mean, of course, without going into all of the
15 issues, the conspiracy theory hasn't been borne out. It wasn't
16 borne out in Ms. Parrotta's deposition. The evidence doesn't
17 establish it. Put all that aside; if they are going to seek
18 these records, then they have a duty to give her one week's
19 notice.

20 THE COURT: That's where I was going with questions
21 about her attorney, Ms. Glavin. Given --

22 MS. GLAVIN: Your Honor, I'll give them --

23 THE COURT: Civil discovery is obviously very
24 different than criminal grand jury subpoenas, which I know is
25 more what you did for many years. It's a very different

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1 process. So I do need you to go through the process of
2 providing a subpoena to -- if it's the attorney identified by
3 Mr. Steele, or a different attorney, some sort of notice to Mr.
4 Parrotta so that we can try to work through the issues.

5 If you have a strong basis for the subpoena, and if
6 you can discuss that with her counsel, it may be that they
7 recognize that it's not worth bringing it to the Court. But
8 that's up to them to try to decide.

9 MS. GLAVIN: I get it, Your Honor. I will notice it
10 as Your Honor indicated. As you know, from your experience in
11 this case, and I sadly learned from my own, everybody has a
12 strong objection, I feel like, to everything. But I will fight
13 and scratch for every yard.

14 THE COURT: All right. Anything else for today, Ms.
15 Glavin?

16 MS. GLAVIN: No, Your Honor.

17 THE COURT: Okay. Thank you.

18 And then I don't want to leave you in the cold, Mr.
19 Moore; anything else on behalf of the New York State Police?

20 MR. MOORE: Nothing further, Your Honor.

21 THE COURT: Okay. Ms. Foti?

22 MS. FOTI: Sorry, Your Honor, I was on mute. No,
23 nothing further, thank you.

24 THE COURT: All right. And on behalf of nonparty
25 Charles Brown, Mr. Mintzer, is there anything further?

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1 MR. MINTZER: Your Honor, I just would like clarity,
2 if possible, on what our obligation is right now. As I
3 understood the colloquy with counsel for the parties, there's
4 going to be an exchange of production from plaintiff. I just
5 want to clarify that our obligation to produce is at least on
6 hold until that has been accomplished and there's some sort of
7 showing that we have something further to add to this. Is that
8 the Court's view of this?

9 THE COURT: It is my view. And unless there's some
10 reason to believe that there have been deletions, or there are
11 issues with the Trooper 1 production, you are on hold, but I'm
12 certainly not going to take the position that the subpoena
13 issued to you is not relevant because the communications
14 clearly are relevant. So it's on hold pending the, sort of,
15 staged order of things that I set forth in the protective
16 order.

17 MR. MINTZER: Understood. Thank you, Your Honor.

18 THE COURT: All right. All right. Well, thank you
19 all, and I hope you have a good day. Enjoy the snow. I don't
20 know if you enjoy snow or don't enjoy snow, but it's at least
21 very pretty. So have a good day, everybody. Take care.

22 MR. MINTZER: Thank you, Your Honor.

23 (Proceedings concluded at 11:49 o'clock, a.m.)

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2 C E R T I F I C A T I O N

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4 I, Sharona Shapiro, court-approved transcriber, do
5 hereby certify the foregoing is a true and correct transcript
6 from the official electronic sound recording of the proceedings
7 in the above-entitled matter.

8

9 *Sharona Shapiro*

10 February 16, 2024

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Sharona Shapiro, CET-492

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